

Exhibit 27

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp. et al.

Civil Action No. 07-10248-PBS

Exhibit to the August 28, 2009 Declaration of James J. Fauci In Opposition To
Corrected Boehringer Ingelheim Corporation and Boehringer Ingelheim Pharmaceuticals, Inc.
Local Rule 56.1 Statement of Undisputed Material Facts
in Support of Their Motion For Summary Judgment

Roxane Laboratories

Inter-Office Memo

To: Ed Tupa

From: Judy Waterer

Date: 10/20/96

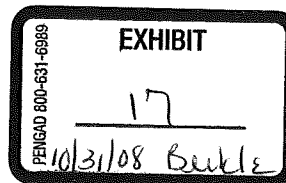
Ipratropium Bromide Back Order
Management Plan

Effective Thursday, October 17th at 9:22 am, we hit a backorder of 90,188 units of Ipratropium Bromide UDV. Although we had two lots close to release, I put a stop on all shipments until Walsh could review the orders and make recommendations on shipping priorities. We will get together Monday morning as soon as he arrives. By that time we will probably have a backorder situation in the vicinity of 130,000 to 170,000 units.

On Friday I met with Mike Spitalli and Jim King to discuss the possibility of us substituting the brand Atrovent for the generic. Mike gave me the following information:

Expected Inventory Maximum to go to Roxane: 500,000 units
Current Forecast: 200,000 through 1996
Current Inventory: 700,000 till January 1997
115,000 units expire 11/97
227,000 units expire 12/97
76,000 units expire 1/98
418,000 units total "short dated"

Mike would like to move this product through Roxane as it is very near its dating cut-off, and he has no way to move it without drastically impacting his brand sales for many months to come. Generic IB-UDV is tracking for the month at about 500,000 units, and this number is increasing monthly. Moving 418,000 units of Atrovent through the generic market sector should not have much impact on the brand in the long term, although I would expect significant impact for a month or two. I believe that it is unlikely for a customer to



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purchase Atrovent at brand price for his brand prescriptions and Atrovent at generic price for his generic sales. Customers who get their hands on Atrovent at the distressed price will use it for all their brand and generic business. Due to the shortened shelf-life and the customers we plan to channel the product through, the impact should be minimal, and the product should be used up within a month of re-sale.

I plan to take the discounted product to select customers that will be the least likely to divert it. The customers that have been identified as likely targets for Atrovent substitution of generic IB-UDV are direct warehousing retail chains, Accurate, and RDI. Apria, MP Total Care, and Health Scripts will also be candidates for this substitution once they sign the 14% Loyalty Bonus Program Contract, as it has very specific definitions and penalties regarding diversion.

Mike and I are trying to work out a transfer price. We were pretty far apart in our needs... Current **best price** for Atrovent is **\$28.78** and the ASP is \$35.29. Mike wants to get ASP or better for the product. Our current dead net best price assuming the 14% discount is **\$19.20** ($\$23.80 - 5\% = \22.61 sell price, minus both the 1% terms of \$0.24 and the 14% rebate of \$3.17). I recommend a transfer price of our current break even cost of \$19.20. I think that because this is "distressed merchandise" the transfer price should be workable. An alternative is to transfer it to us at a higher cost and then reimburse us a fee for the use of our resources to move the product. The direction that we got from Jim was to "get rid of it, but don't mess up the best price".

I'd like to have BI hold the inventory until we sell it. I would prefer to avoid taking possession of the inventory, as with Dey's launch imminent, the demand numbers could change dramatically. At most, Roxane should take ownership of one lot at a time. It is probably a good idea for us to take only full lots - that way BI could assure that if any does come back as a return, it will be reimbursed properly... Will they cover returns, or bill us for them?

Rorie Skislock has indicated that customers are getting very vocal in expressing their fears of our ability to supply. I don't need to mention how critical a time this is. Rorie felt that the level of concern was in excess of what he would consider "normal" for just a few days delay in shipment. We can assume Dey is whipping up the level of concern. We need to have a response and plan together Monday with implementation and shipment beginning Tuesday.

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I would like to offer up the brand product to RDI and Accurate. They both believe they will be able to sell in the vicinity of 100,000 units in less than a month (based on rough concept-ballpark conversations; actual orders may vary!) They would use the brand as a "hook" to keep customers buying Roxane once Dey is out. Independently, they both stated that this was an opportunity that they had been looking for to counter Dey's expected albuterol bundle. Once the albuterol bundle has been out for a month or so, all other albuterol manufacturers will lower to match the new Dey net price, so the bundle will have a short term value. Being able to offer branded product at a discount to "lock-up" loyalty on the IB-UDV is felt to be a much stronger deal than anything Dey can do with albuterol. Both RDI and Accurate are anxious to know if they can go with it. They'd like a firm answer Monday afternoon. ISSUE: RDI will have to get extended credit, and we're already out about \$1MM with them. Powell will have to pay off some bills, or get some kind of exception if he brings in 100,000 boxes at 22.61, we're talking another \$2.26MM. Accurate should be able to get whatever additional credit that they need. They seem to be better backed by their bank. In any case, credit will be an issue for both customers to some degree. Also, we will need to consider accruing for our rebate liabilities in 1997. Sales on IB-UDV in 1996 that have rebate liabilities that will be paid out in 1997 should be reduced to reflect those liabilities. If we take a hit in 1997 for rebates on 1996 sales, it could reduce our sales in 1997 by a couple million dollars. I am concerned that we will have trouble hitting budget if we go into the year with that large a liability hanging over our heads. Lets accrue the liability in the year of the sale. (If we sell \$35MM in 1996 with a rebate liability average of 7%, our liability could be \$2.45MM.)

I would like to have the field contact all other large direct customers (those with orders pending first) to attempt to substitute the 30's for the 25's for a few select customers. If that won't be acceptable, then we can offer up the brand product. We need to do our best to keep the wholesalers' orders filled with the 25's. Here's where we stood on Thursday morning, but it probably will be doubled Monday Morning when I get my next printout to review with Walsh...

Largest Direct Customers Backorder Status:

25's	Equivalent 30's	
5760	4800	Apria
1968	1640	Eckerd
816	680	Thrift

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816	680	Walgreens
576	480	Service Scripts
	<u>8,280</u>	

Largest Wholesale Customers:

21,027	Cardinal
23,280	Bergen
11,760	Fox
7,328	Amerisource
2,064	General Drug
1,632	Great Lakes
864	Smith
<u>700</u>	Bindley
<u>68,700</u>	

Based on our inventory plan, we expect to be able to cover the wholesalers with 25's through October. We must succeed in switching non-wholesaler direct accounts to 30's and/or Atrovent brand product immediately. The month of November will be extremely challenging with only 180,000 x 25 becoming available and 95,250 of the 30's. I think back-order will be totally unavoidable only if we ship brand Atrovent to the wholesalers (which is not a reasonable action to take in light of chargeback and return issues). If Accurate and RDI are successful in pushing the brand as generic into the sectors that traditionally buy through wholesalers, then the wholesaler demand should be somewhat diminished in November, and their inventories may be in "OK" shape. With the Dey launch imminent this is no time to have low wholesaler inventories, so hopefully Accurate and RDI can pull it off.

Summary of Issues:

Necessity for immediate action

Transfer price to Roxane

Accrual for rebate liabilities in 1997 from sales in 1996

Quantity of Atrovent available to us and the timing

Inventory Possession (drop-ship through BI?)

Customer notification and plan

Credit issue resolution for RDI and Accurate

Walsh to prioritize and/or cut wholesaler customer orders

Who to approach customers on substitution (BISC of Walsh)?

November backorder probably unavoidable - even with Atrovent

I will be in the office Monday morning, and available all day except between 9:30 and 11:00 when I'm meeting with Hector Diaz. If convenient for you, please feel free to call me at home tonight. I'll take this information home with me so we can discuss it.

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